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District Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry Street
Tulare, CA 93274

CASE NO. 17-13797

DC No.: WW-1

Chapter 9

Date: October 12, 2017
Time: 10:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

**DECLARATION OF KEVIN B. NORTHCRAFT IN SUPPORT OF MOTION FOR
AUTHORIZATION TO REJECT EXECUTORY CONTRACT
(HEALTHCARE CONGLOMERATE ASSOCIATES, LLC)**

I, Kevin B. Northcraft, hereby declare and represent as follows:

1. I am the elected chairman of the board of directors of Tulare Local

1 Healthcare District ("District"), a California healthcare district covering a large part of
2 Southwestern Tulare County. The District serves over 90,000 people. It is the only
3 hospital in the District.

4 2. The District has been embroiled in political and financial controversies for
5 many years and this has impeded the ability of the District to move forward in providing
6 quality healthcare to the citizens of the District.

7 3. I am informed and believe that the controversies began in approximately
8 1994 when Dr. Pramood Kumar was appointed to the board to fill a vacancy. From and
9 after that time, there have been significant controversies among the citizens and voters
10 as to the proper management and control of the hospital. There have been deep divides
11 within the community.

12 4. For many years the board was controlled by Dr. Kumar. During that time
13 the District embarked upon an ill-fated decision to borrow money to construct a hospital
14 tower.

15 5. The District borrowed \$85 million in general obligation bonds and
16 additional revenue bonds for the tower construction project but it was soon consumed
17 by construction cost overruns, litigation and disputes over the proper use of bond
18 proceeds. During this time, many citizens in the District began to express concern and
19 dismay as to the management of the District's operations by the Kumar board.

20 6. A historical overview and timeline prepared by me, based on information
21 which has been provided to me, of the various controversies, missteps and
22 confrontations is as follows:

1 **Tulare Local Healthcare District, dba Tulare Regional Medical Center**

2 **History/Timeline of Events Leading to Financial Crisis**

3 I am informed and believe that the District is a public agency, formed in 1945
4 under the State of California Local Healthcare District Law. The geographic area
5 covered by the District encompasses a very large area in the Southwestern part of
6 Tulare County and includes the City of Tulare. The permanent resident population of
7 the District is estimated to be approximately 90,000 persons. The District provides
8 healthcare services primarily to individuals who reside on the local area. The District's
9 hospital is the only hospital in the District.

10 The voters of the District elect the Board of Directors by districts.

11 The District is governed by a five-member Board of Directors. The current
12 members of the Board are Kevin B. Northcraft, Mike Jamaica, Senovia Gutierrez, and
13 Xavier Avila. There is one vacant seat. On October 4, 2017, the Board approved the
14 hiring of HFS to act as the Board's advisor and head the District's crisis management
15 team, which is headed by Sanford Haskins and Rick Gianello of HFS. The fact that the
16 Board is elected by the public causes both problems and opportunities that are
17 generally associated with local government entities. Its governing body and senior staff
18 undergo much closer public scrutiny and must devote more time to public affairs than
19 would be the case if it were a private entity. On the other hand, as a local public entity,
20 local residents tend to be supportive of the District.

21 As of the signing of this Declaration, day-to-day operations of the hospital were
22 under the control of HCCA under various agreements. There have been and continue to
23 be major disputes between TRMC and HCCA, briefly discussed below.

24 I am informed and believe that like most rural hospitals in California, the District
25 faces immense financial pressures.

26 There has also been intense community involvement and disagreement over a
27 15 year management contract with HCCA a prior Board entered into on May 29, 2014,
28 discussed below.

1 The District's residents desire and require nearby emergency, urgent and acute
2 care services. To provide these services, I am informed and believe that the District
3 must actively participate in developing and maintaining a panel of primary care and
4 specialty physicians within the District and maintain and upgrade its medical,
5 obstetrics/gynecology, imaging, laboratory equipment, physical plants, and rural health
6 clinics.

7 Under California law, hospitals are required to treat any person who presents at
8 the emergency room without regard to the patient's ability to pay for services. The
9 District accepts all patients regardless of their ability to pay. The District absorbs the
10 costs of medical care for uninsured patients who account for a very large percentage of
11 its volume.

12 A patient is classified as a charity patient by reference to certain established
13 policies of the political district. Essentially, these policies define charity services as
14 those services for which no payment is anticipated.

15
16 The District has been contending with significant disruptions in its governance
17 over several years. Based on my information and belief, a chronology that explains this
18 political unrest and which lead to management turnover is as follows:

- 19 • 1994 - Parmood Kumar is appointed to the board of directors of Tulare Local
20 Healthcare District, dba Tulare Regional Medical Center ("TRMC").
- 21 • November 2005 - Tulare voters pass a bond measure to build a tower expansion
22 at TRMC.
- 23 • 2005 – 2010 - TRMC tower planning expands and the cost of the project exceeds
24 original projections while hospital revenue declines.
- 25 • May 2010 – TRMC tower construction finally breaks ground and Shawn Bolouki,
26 CEO at the time, tries to speed up the construction project.
- 27
- 28

- 1 • January 2014 - TRMC board of directors, Parmod Kumar and Sherrie Bell, vote
2 to hire Healthcare Conglomerate Associates ("HCCA") to run the hospital and
3 Bolouki leaves as CEO. HCCA promises to finish tower expansion and get
4 hospital on stable financial ground. In May 2014 the TRMC board signs a 15-year
5 management agreement with HCCA.
- 6 • November 2015 - Due to low revenue vendor invoices continue to rack up
7 including Cardinal Health, a large drug supplier, to whom the hospital incurred a
8 debt of about \$830,000 from Nov. 2015 to May 2016. TRMC later took out a loan
9 to repay the company.
- 10 • Between 2014 and 2016 various vendors, suppliers and contractors file lawsuits
11 claiming unpaid bills and services.
- 12 • March 2016 – HCCA extends a \$200,000 line of credit from TRMC to the
13 Southern Inyo Healthcare District which HCCA also manages. The line of credit
14 was extended without TRMC board approval. In July 2016 this line of credit was
15 extended to a \$500,000 limit.
- 16 • 2016 - The State of California issues citations to HCCA and TRMC in patient
17 deaths and surgical errors.
- 18 • September 1, 2016 – TRMC board approves taking out a \$800,000 line of credit
19 with no specific purpose at the time. Any use of these funds were to require
20 further board approval. It was later revealed these funds were to be used to
21 repay Cardinal Health.
- 22 • August 2016 - Voters vote down bond measure to secure financing to complete
23 tower construction project and the hospital is forced to make significant layoffs.
- 24 • October 2016 – Dr. Benny Benzeevi of HCCA presents to the board that the
25 hospital had reached 30 months of consecutive profits and states that the
26 hospital has the ability to complete the tower expansion project but only two
27 months later, in December 2016, the hospital's operating expenses become past
28 due.
- November 2016 - Kevin Northcraft and Mike Jamaica are elected to TRMC board
of directors.

- 1 • March 2017 – TRMC board votes to allow HCCA to seek and obtain a \$79 million
2 loan to complete the tower expansion.
- 3 • March 2017 – July 2017 certain vendors and suppliers continue to file suits for
4 unpaid invoices.
- 5 • May 18, 2017 - HCCA donates \$10,000 to a group working to prevent the recall
6 of HCCA supporter and board member Dr. Parmod Kumar. Dr. Parmod Kumar
7 was recalled by voters in July 2017. Senovia Gutierrez is voted in to replace
8 Kumar on the board of directors.
- 9 • June 2017 – Board of directors vote to allow HCCA to again seek and obtain a
10 \$22 million loan to refinance certain debt and fund operations.
- 11 • July 2017 – Employee paychecks begin to bounce and some physicians claim to
12 have gone without pay for months.
- 13 • July 27, 2017 – The majority of the Board vote to rescind any authority given to
14 HCCA to seek any loans on behalf of TRMC. HCCA claims this vote is invalid
15 and asserts Gutierrez is not recognized as a board member, despite her election.
- 16 • September 27, 2017 – Senovia Gutierrez is officially seated and recognized by
17 TRMC board of directors.
- 18 • September 2017 - TRMC board issues and disputes with HCCA cause credit
19 rating to downgrade.
- 20 • September 8, 2017 - HCCA issues a letter to TRMC claiming TRMC owes it \$8
21 million including expenses and charges incurred in connection with “leased”
22 employees. HCCA also claims TRMC is \$526,066.86 past due in management
23 fees.
- 24 • September 28, 2017 – HCCA is unable to make payroll and considers shutting
25 down all operations due to mounting significant financial issues and lack of
26 available funds.
- 27 • September 29, 2017 – TRMC board of directors unanimously vote to seek
28 Chapter 9 bankruptcy protection.

- 1 • September 30, 2017 – Petition for relief under Chapter 9 is filed.
- 2
- 3 • October 5 and 9, 2017: HCCA informs TRMC it will lay off or suspend its
- 4 employees working at the hospital as it is unable to pay them.
- 5
- 6 • October 9, 2017: TRMC authorizes counsel to file the necessary paperwork with
- 7 the bankruptcy court to reject the HCCA contract.

8 Providing quality health services to District residents is the primary goal of the
9 District and necessary to the community, in part, because of the relative rural location of
10 the District. The residents need emergency room, inpatient, obstetric and other
11 ancillary services. The critical nature of the need for health care services requires the
12 Board to place a high priority on the continued financial viability of the District.

13 14 **District's Financial Problems**

15 At the time the District's Board of Directors considered filing a Chapter 9 petition,
16 the District was facing a liquidity crisis that threatened its continued operations and was
17 concerned that preferential transfers were being made. The Board concluded that filing
18 a Chapter 9 was the only available remedy to avoid continued litigation with and
19 collection action by creditors, while, at the same time, allowing the District to protect its
20 assets, preserve its business operations and continue providing uninterrupted
21 healthcare services to its patients while it developed a comprehensive business plan.
22 The task of restructuring the District is particularly complicated and time consuming
23 because of the multitude of financial and contractual relationships inherent in the
24 hospital enterprise. The decision to file Chapter 9 came only after the District attempted
25 alternatives that would have avoided such a filing as the District was told by HCCA it
26 was nearly out of cash and unable to meet payroll or purchase vital medical supplies.
27
28

1 I am informed and believe that in about May 2014 these various controversies
2 reached a fevered pitch when the Kumar dominated board entered into a entered
3 into a very unfavorable contract ("Contract") with Healthcare Conglomerate
4 Associates, LLC ("HCCA"). A copy of these four integrated agreements are attached
5 as Exhibits A1, A2, A3 and A4. By these contracts the Kumar dominated board sold
6 out the District and gave all control over the District's operations and finances to
7 HCCA. As a small example, members of the board were not even allowed to enter
8 on the District's property without the consent of HCCA. The board was denied
9 meaningful financial information. The Contract requires the District to pay HCCA a
10 management fee of about \$8 million per year. All of the District's money was turned
11 over to HCCA. [I believe the District has an account but is swept every night by
12 HCCA through the sweeping function, but we do not know where these accounts are
13 and HCCA will not tell us.] After HCCA took control of the District's operations and
14 finances, it insisted on pressing forward in a plan to obtain new borrowing to
15 complete the hospital tower. The 2016 vote was overwhelmingly against the new
16 bond issuance and the campaign pitted parts of the community against one another
17 deepening the divide.

20 7. Shortly thereafter Dr. Kumar was recalled by the voters by a large margin
21 and shortly thereafter Senovia Gutierrez was elected on June 27, 2017. Gutierrez was
22 aligned with myself and Director Mike Jamaica in seeking to regain control over the
23 District's finances and governance. However the election did not end the controversy or
24 interference by HCCA in the District's governance. Upon her election Gutierrez (and the
25 rest of the board) was told by HCCA and then District Counsel who reported only to
26 HCCA and not to the board) that she had not been "properly seated" and during this
27 time HCCA sought to borrow money against the District's assets based on a consent
28

1 previously given by the Kumar board, but knowing that if Gutierrez were to be seated
2 the consent would be withdrawn and demands for accountability would be given to
3 HCCA.

4 8. HCCA and its hand-picked counsel (paid from District funds but reporting
5 only to HCCA) continued to thwart and deny Gutierrez her seat on the board until
6 September 15, 2017 when the District Attorney of Tulare County filed a Petition for
7 Alternative Writ of Mandate which thereafter forced HCCA to cease opposing election
8 her and she was officially seated on September 27, 2017, after an unconscionable
9 delay of sixty days. I am informed and believe that the delay in seating Ms. Gutierrez as
10 a board member was because HCCA had the ulterior motive of attempting to find
11 financing to pay themselves for services claimed to have been rendered. I understand
12 that HCCA paid itself and its lawyers a substantial amount of money instead of using
13 that money to keep the hospital operational.
14
15

16 9. Upon having a now functioning board of directors, the District turned its
17 attention, again, to the one sided agreement that the Kumar board had entered into with
18 HCCA on May 29, 2014. It should be noted that even before Director Gutierrez was
19 seated on September 27, 2017, Director Jamaica and I had been insisting upon
20 receiving current, meaningful financial information from HCCA. Among the things that
21 we requested were: 1. Tell us where our District's money is deposited? 2. Where are the
22 District's money swept to and who has signatory power? 3. Who do we owe, how much
23 and what is the aging of these accounts payable? 4. What do we owe HCCA and what
24 makes up those charges? 5. What is owed to the District on account of on account of
25 our accounts receivable and what is the status of collections? 6. What is our cash
26 position and what are our short-term needs?
27
28

1 10. Amazingly, to this day HCCA has refused to supply any of this vitally
2 needed information to the elected representatives of the District. This has thwarted us in
3 the administration and governance of the District and imperiled its financial survival.

4 11. At the present time the board of directors is completely in the dark in terms
5 of what is going on in the hospital, including revenues, debts, patient counts, etc. No
6 material financial information has been provided to us about the condition of the
7 Hospital. In fact, it appears as if the Board has been deceived about the financial
8 condition of the hospital as prior to the Board Meeting on September 27, 2017, HCCA
9 was reporting the hospital's profits were increasing. However, at a public meeting held
10 on September 27, 2017, which I attended, the CFO of HCCA publically stated and told
11 the assembled crowd that the patient census had dropped to an ultra-low level, there
12 was "no cash", accounts payable were at least \$26 million and there was at least \$25
13 million in uncollected charges.

14 12. In recent days, we have also learned through third parties that the District
15 may owe its utility company \$139,000 and is being threatened with a power shut off. I
16 am also informed and believe that the District owes an important billing service no less
17 than \$2,000,000. It owes its preferred provider of supplies and equipment about
18 \$400,000. Physicians and medical groups have not been paid. The list goes on and on,
19 but we do not know because HCCA will not tell us what we owe.

20 13. At the public board meeting held on September 27, 2017 the CEO of
21 HCCA, Benny Benzeevi, M.D., publicly stated that the situation was so dire that the
22 hospital had "only two options". Either accept a loan that HCCA had negotiated or close.
23 However, Dr. Benzeevi did not inform us of the amount of the loan, the lender, the term
24 of the loan, the collateral, or any other vitally needed details as to the supposed loan.
25 He did not provide any terms or conditions as to the loan whatsoever.

1 14. I have over 30 years' experience in municipal governance including 10
2 years as City Manager of the City of Tulare from 1995 to 2005. It is my professional
3 opinion, and based on long professional experience, that the Contract between HCCA
4 and the District is very unconscionable, unfavorable, void as to public policy,
5 burdensome, over expensive and improperly interferes with the legally required
6 governance of the District. The District does not need nor want this Contract. It has
7 alternatives that are much more favorable.
8

9 15. On September 28, 2017 the board was informed that only a few of the of
10 the essential HCCA employees who operate the hospital were paid for their services,
11 leaving a great number of nurses and other healthcare personnel unpaid. The lifeblood
12 of a hospital are the dedicated healthcare professionals who give care and comfort to
13 the patients. Nonpayment of employees threatened the survival of the hospital.
14

15 16. I am informed and believe that on September 29, 2017 HCCA's CFO
16 assembled groups of employees and told them that if the District did not accept the loan
17 HCCA had negotiated and described to the board, the hospital would be shut down.
18 This CFO was personally present at the meeting held the night before and he knew Dr.
19 Benzeevi had NOT made such a disclosure to the board. He lied and told the
20 employees that HCCA had presented the loan details and that the board had refused to
21 consider it when, in actuality, the board did not receive any information about the so-
22 called loan.
23

24 17. From and after September 29, 2017 the District and HCCA reached out to
25 each other, through counsel, and attempted to avoid a crisis. Proposals were
26 exchanged and none were found to be mutually agreeable.
27

28 18. Finally, on October 6 at 6:12 PM, the District was informed that unless
agreement was reached by 8 AM on October 7, 2017, HCCA would proceed to

1 terminate or suspend its employees.

2 19. Having been unable to reach an acceptable agreement for a turnover of
3 District governance and operations, on October 9, 2017 the board met and discussed at
4 length its available courses of action and reviewed, again, the Contract. The board (the
5 undersigned, Avila and Jamaica) voted to instruct its counsel to seek rejection and
6 termination of the Contract so the District can recover control over the District's assets,
7 finances and operations and so the Board can fulfil its fiduciary and statutory duties.
8
9 Ms. Gutierrez was not present as she was out of the country.

10 20. On October 4, 2017 the District made arrangements with its Crisis
11 Manager, HFS, to assume control over hospital operations if HCCA is terminated/
12 rejected and HFS made arrangements with a healthcare provider of significant size,
13 located in Fresno, to provide emergency interim management of the District's
14 healthcare facilities and provide emergency funding to keep the hospital open for an
15 interim period of time. The terms are still being negotiated.

16
17 21. The District respectfully requests that the Court authorize the District to
18 reject the HCCA contract.

19 I am over the age of 18 and if I were called as a witness in connection with this
20 proceeding I would and could testify as is set out in this declaration. I so declare under
21 penalty of perjury this blank day of October 10th, 2017 at Tulare, California.
22

23
24 
Kevin B. Northcraft